



STRITMATTER KESSLER WHELAN COLUCCIO



Real Justice for Real People

PUBLIC JUSTICE FOUNDATION
2010 CHAMPION OF JUSTICE
PAUL L. STRITMATTER

Volume 1 | Issue 8
June 2010

TABLE OF CONTENTS

| | |
|---|-----------|
| ABOUT PUBLIC JUSTICE | 3 |
| CHAMPION OF JUSTICE AWARD..... | 4 |
| MY CHAMPION | 6 |
| STRITMATTER KESSLER WHELAN COLUCCIO CONGRATULATES..... | 8 |
| AND THE BAND PLAYED ON..... | 10 |
| HOW DO YOU SPELL “DOG” IN THE COURTROOM..... | 18 |
| PATERNITY CASE..... | 27 |
| EVEN BETTY BOOP WOULD HAVE BEEN EMBARRASSED – OR – OOPS..... | 30 |
| PRESS RELEASE | 32 |
| ABOUT STRITMATTER KESSLER WHELAN COLUCCIO | 34 |

ABOUT PUBLIC JUSTICE

Public Justice is America's public interest law firm. Through creative litigation, public education, and innovative work with the broader public interest community, it:

- protects people and the environment;
- holds the powerful accountable;
- challenges government, corporate, and individual wrongdoing;
- increases access to justice;
- combats threats to our justice system; and
- inspires lawyers and others to serve the public interest.

www.publicjustice.net

CHAMPION OF JUSTICE AWARD

We are proud to be presenting Paul Stritmatter with our highest honor – the Champion of Justice Award. He has committed his life to fighting for justice, building Public Justice, and ensuring access to justice for all.

Already one of the nation's top lawyers in 1982, Paul was a Founder of Public Justice (then Trial Lawyers for Public Justice) because he was dedicated to using his skills and resources to advance the public good – and organizing others to do the same. Since that time, he has helped build Public Justice into America's public interest law firm, involved in a broader range of cutting-edge, high-impact litigation than any law firm in the country.

In addition to his extraordinary accomplishments in private practice, Paul has played a critical role in Public Justice's cases. He was a finalist for the 1991 Trial Lawyer of the Year Award because of his accomplishments in *Buenrostro v. Washington State Apple Advertising Commission*, winning a record \$617,500 settlement for migrant farmworkers lured to Washington by false advertisements of plentiful jobs and free immigration assistance. In *Ruiz-Guzman v. AMVAC Chemical Corp.*, he won a precedent-setting appeal against a toxic pesticide manufacturer that made new law protecting

consumers and workers throughout Washington. At this moment, he is prosecuting a major class action against AT&T/Cingular for misleading and overcharging millions of customers.

Paul is also a great leader. He was repeatedly elected to our Board of Directors and unanimously elected President in 2002. When I suffered a near-fatal car crash one month later, Paul held Public Justice together.

Paul Stritmatter is an extraordinary person and a tremendous lawyer. He is truly a Champion of Justice.

—Arthur Bryant
Executive Director, Public Justice Foundation

MY CHAMPION

The day I first met Paul Stritmatter he was working in his capacity as President-elect of the Washington State Bar Association. His passion for the justice system was immediately evident. He advocated for the strength and the improvement of the justice system and especially for the rights of the disadvantaged. He championed the need for the support of the civil justice system and he helped push through a new concept, an Access to Justice Board to oversee the myriad of local, state, and national efforts to support the civil legal services needs of the disadvantaged.

Paul chaired the new Access to Justice Board for its first three years of existence after his term as State Bar President expired. He was a founder and the first President of the Northwest Justice Project. He was a founder and officer of Law Fund, the organization that raised funds from the private bar to support civil legal services for the poor. He served on numerous committees to advance the cause of civil justice.

I can personally speak, from close observation, regarding his passion for civil justice issues. And then at the same time, he puts this passion into effect in his representation and advocacy for his individual clients. He not only talks the talk, but he walks the walk on behalf of his individual clients on a daily basis.

I share his passion for justice. We have worked together over the years in many ways to promote and raise money for these causes. It is one of the basic reasons why we fell in love and married. I have always been proud of his efforts.

This award of Champion of Justice is a great tribute to Paul and his efforts. On behalf of his family, I thank Public Justice for this recognition. (His granddaughters, Bailee and Emma, and I are wondering – this award, Champion of Justice, does it come with tights and a cape?)

—*Mary Elizabeth Stritmatter*

STRITMATTER KESSLER WHELAN COLUCCIO
congratulates and joins Public Justice
in honoring our partner,
PAUL LESTER STRITMATTER,
as a *Champion of Justice*

For 40 years, Paul Stritmatter has worked tirelessly to ensure that people who reach out for help will realize the promise of our civil justice system.

Among Paul's tremendous accomplishments is *Sofie v. Fibreboard*, a landmark Washington Supreme Court case. Our Legislature had enacted a law that set a ceiling on damages. Paul argued that the law abridged the constitutional right to trial by jury – and won. The law was held unconstitutional, directly protecting Washington's citizens, and setting the stage for similar challenges across the country.

In *Buenrostro v. Washington Apple Advertising Commission*, Paul worked pro bono with Legal Services on behalf of migrant farmworkers who had been fraudulently induced to leave their homes and families in Mexico by radio broadcasts guaranteeing employment harvesting apples. When the workers arrived, there were no jobs, no housing, and no financial means of returning home. Paul mounted an aggressive legal campaign to get these people housing,

medical care, and funds to return to Mexico. He ended the suffering.

The list goes on and on. Years of public service. Decades of caring.

From the entire SKWC family, thank you, Paul, for bringing honor to our firm and to our profession.

A brilliant prize-fighter for public justice.

A champion.

—*The Attorneys & Staff at
Stritmatter Kessler Whelan Coluccio*

AND THE BAND PLAYED ON

In 1990, most of Aberdeen stunk! It was horrible! It was a combination of the smell of sewage, rotten eggs, and as one witness described it in his testimony, “The vomit from 60 sick kangaroos”.

People of South Aberdeen had been putting up with this for many years. It wasn't constant, because it was dependent upon which direction the wind was blowing. The source of these terrible odors? The wastewater treatment ponds of a local pulp mill.

The pulp mill is actually several miles from South Aberdeen. In the pulp-making process, wastewater is created that is discarded. The pulp mill ran this effluent through a pipe three miles to a series of large ponds. It was nearly a mile and a half from the east end of the first pond to the west end of the last pond. The wastewater was chemically treated and aerated in order to remove dangerous and illegal chemicals before it was flushed into the harbor and then sucked out into the Pacific Ocean.

In 1990, the aerators had been turned off. This resulted in the ponds going anaerobic. Considerable bacterial action was taking place causing the horrible odors. It was a disgusting experience for everyone in the vicinity.

But the problems were more than just the odors. The people in South Aberdeen had been suffering from the effects of these chemicals that had been thrown in the air

for years. People commonly had headaches, eye irritation, nosebleeds, sinus problems, sore throats, and coughs, as well as the nauseating odor. The legal team also believed that some of the serious illnesses of lung disease and cancer were also contributed to by exposure to those chemicals. We filed a lawsuit against the pulp mill on behalf of 240 South Aberdeen residents.

The case was very technical, difficult and long. The trial itself took three months. The length of the trial was due to the need to present a tremendous amount of scientific information to the jury to understand the issues of medical causation. In order to describe the wastewater and what was in it, we presented an expert on how a pulp mill and the pulp making process works. We had experts on how the chemicals and gasses in the wastewater got into the air. We had experts on quantifying the amount of those chemicals and gasses. We had experts in how the offending materials then moved from the wastewater ponds through the air into the community where our clients lived. We had experts on the amount of exposure that they suffered and the quantity of the chemicals that they inhaled. We then had medical testimony about the health effects from inhaling these amounts of noxious materials. It was an expert witness's dream; it was a trial lawyer's nightmare.

We had great difficulties finding qualified experts in the United States to testify against the pulp mill. American experts in the field, in the form of university professors and industry personnel, assured us that our case was viable and correct, but that they didn't want to stand up to this big

corporation because everyone had some contact with them. Thus, we had to go to Canada and Europe to hire our experts. This case was going to be expensive to present.

This type of litigation is called “toxic litigation” or a “toxic tort”. The various issues required testimony from experts in a broad range of fields, with nearly all of them required to be on a PhD. level. We had one expert from Canada, who between himself and two others in his firm, ultimately cost us more than \$1 million in expenses in presenting their work and findings.

The defense didn’t have it any better. They hired experts of their choice and their primary expert prepared a 520-page report. The lead defense counsel was furious; he did not believe that it was necessary to go to that extent in the defense of the case. Their expert also cost them in excess of \$1 million. Frankly, both Plaintiff and Defense counsel were so embarrassed about the amount of money that had been spent on the experts, that the usual questions of how much the experts were being paid to show bias were not used by either side during the trial.

As is the standard practice with the use of experts in litigation today, we took a pretrial deposition of the defense expert to find out what he had done and what conclusions he had reached. It turned out to be a very strange deposition. While it probably should have lasted one day, taking maybe six to eight hours, the deposition lasted for three days. The reason is that when a question would be asked, the expert would sit and think about the question, often stand up and walk

around the room, sometimes stare out the window, and then come back and sit down after a delay of three to five minutes before he would answer the question. I had never seen anything like this before from an expert. I wondered how he would handle testifying at trial under cross-examination. We were soon to find out.

As we went over in detail the defense expert's reports and testimony from his deposition, we discovered that he had made a significant and fatal fundamental mathematical error. This mathematical error resulted in numbers that undercut all of his opinions. It was the sort of error that should have been discovered by a high school math student. Having made the mathematical error, he then had premised all of his opinions and ultimate conclusions on the figures that were invalid. I knew, more than I had ever known before, that my cross examination of him would result in his being completely discredited. It was rather exciting preparing for his cross-examination.

He was on the stand for a day and a half for the direct testimony. Fortunately, he had not discovered his mathematical error. All of his testimony was given consistent with his earlier reports and his deposition testimony. He was polished and professional in his presentation and, of course, there were no delays between the questions by defense counsel and his answers. My cross-examination was to start first thing on Wednesday morning.

I had prepared in detail an outline of how I was going to go about this cross-examination. There were a large number of

matters that I wanted to question him about before I got to the coup de grace. I didn't want to just stand up, point out his mathematical error and be done. I anticipated about a three-hour cross-examination. As I began the cross examination, as one would expect, no longer were there delays like we had seen during his deposition. He remained polished and confident, conceding some of my points, sparring with me on others, but I felt I was making inroads.

I need to set the scene. The trial was in Montesano, Washington, a small town with lovely surroundings toward the east end of Grays Harbor County. The courtroom I consider to be the most beautiful courtroom I have ever had the pleasure of working in. It was built around the turn of the century. It is elaborate and ornate. Beautiful ornamental wood cornices and elaborate crown moldings line the room. Huge murals on the walls admonish the witness to tell the truth. Large windows cover two walls of the courtroom. It is truly splendid. But they don't have air conditioning. This trial was in late August and had now gone into early September. It was an uncommonly warm period of time. So, they ran the courtroom with the windows open. Otherwise, the heat would have been unbearable.

The local high school students had not yet returned to school, but the first football game would be in a couple of weeks and so the band members had returned early to practice for their opening football game. This included practice of marching while playing. And on the morning of my cross examination, the band was snaking its way toward the Grays Harbor County Courthouse.

I was about one hour into my cross-examination when we first heard the band, probably two blocks away. It was marching straight up First Street toward the courthouse and toward the open windows. As I continued my questioning of the defense expert witness, we could all hear the music playing louder and louder as the band approached. It soon became apparent that when the band got all the way to the courtroom, we were going to be unable to continue. The music would drown out my questions and any answers. The jury started to become a little restless because they figured out this was what was going to happen. I was trying to figure out what I would do. Just about the time I figured I would need to stop and have my cross-examination interrupted, the band stopped playing. I continued with my questioning. Three or four questions later the band once again struck up, this time playing the Montesano fight song. It was so loud that I was forced to stop. The jury began laughing, as did the witness and myself. I stood there for about a minute and the band didn't seem to be moving. Then they stopped. I turned to the witness and I said, "The next time you hear the cymbals crash, boy do I have a question for you." The jury laughed and I began questioning him again. I had not gotten out more than two or three questions and once again the band started up. Everyone began laughing and once again I was forced to interrupt the cross-examination.

The band then turned and began marching away and after a couple of minutes I was able to resume my questioning. Having put out the threat, I felt I was forced to follow through with it. So I jumped down to that portion of my notes at the

end of my planned cross-examination to force him to admit his mathematical error which would undercut all of his opinions.

I asked the question in some detail and at some length. However, it was quite apparent to everyone what I had found and what I was asking. The witness just stared at me. It is hard to really measure time in instances like this. Initially, I would estimate that he just stared at me for a full minute. He then began fussing with his paperwork, which was sitting on both sides of him. He reorganized the papers, which took at least another minute. He then stood up, turned in a complete 360-degree circle, sat back down and began staring at me again. This lasted another minute. I said nothing during this entire time. He then asked, “Would you please restate your question.” I went in for the kill! He knew he had made a monumental error. He knew there was no way to get out of it. He crumbled on the stand. The million-dollar expert for the defense had been totally destroyed!

The defense did not know what to do, and made no attempt to rehabilitate him. It had now become obvious that all of his opinions had been undermined. We went on to the next witness.

The next day, I had an opportunity to speak to the defense lawyer in private. I said, “I would like to have been a fly on the wall during your luncheon meeting with your expert to hear what was said after his testimony.” Defense counsel said, “You didn’t need to be a fly on the wall, you could have stood out in the middle of the street and heard me screaming

at him. I gave him a plane ticket and told him to go home and I didn't ever want to see him again."

Defense counsel then said, "I knew that you were going to "hometown me", but I sure didn't know that you were going to get the use of the local high school band to accompany your cross examination. That's a new one I've never even heard of before."

Well, if the truth be known, my million dollar expert witness didn't come off very well either. The jury found the defendant liable and awarded a significant sum for each of my clients for their minor injuries, but the jury found that there was no causation from these exposures on the serious illness claims we presented. But, I must say, I will never forget the day that during my cross-examination, the band played on.

HOW DO YOU SPELL “DOG” IN THE COURTROOM

The life of Shawn was drastically and forever changed that fateful day. The throttle stuck on the motorcycle, and as he proceeded up the hill at the local park, the 15-year-old had no alternatives. In the subsequent crash, he suffered the most significant injuries possible, short of losing his life.

Shawn was rendered a spastic quadriplegic. His injuries are the result of an axonal brain injury. The injury is diffuse, or spread across many parts of his brain. As a result, there is hardly any aspect of his functioning that is not affected. He cannot speak. He cannot take food through the mouth and must be fed through a tube. He can move his limbs, they are not paralyzed, but he has great difficulty coordinating that movement. He cannot walk and is confined to a wheelchair. Bowel and bladder functions are dealt with by tubes and stimulation programs. But Shawn is perfectly aware of his surroundings. If one can describe someone confined to a wheelchair who can make only groaning sounds as vibrant, Shawn is vibrant. His eyes are alive. He is aware of everything going on around him. He yearns to participate and does so to the extent possible with the use of a computer and a footboard. But it was not always that way.

Shawn was immediately hospitalized after the crash and remained in a coma for six months. His doctor advised the family that it would be best to wheel him into the hallway for the night, allow him to contract pneumonia and quickly but

gracefully pass away. His mother would have none of that! So he remained in a coma month after month with his mother talking with him, wiping his brow, reading him stories and informing him daily of what was going on with his family and friends. At six months Shawn started to move his big toe. Soon his eyes were moving. Later he began moving his limbs, although not with any real coordination. He slowly woke up to the new world he faced, trapped in a body that would not function.

Shawn laughs. It was not long before it became apparent that he was aware of his surroundings because of his reactions to what went on around him. If someone told a good joke, you could be sure that Shawn would be the first to appreciate the punch line and respond with glee.

Within another eighteen months, Shawn had progressed to the point where he was able to attend school. He was placed in a special education program. However, progress was difficult to measure, at best. A crude communication system had been developed involving Shawn moving his eyes and to some extent his head in response to leading questions asking for a yes or no response. If he agreed, his eyes went to the right for a yes; if he disagreed, his eyes went to the left for a no. It certainly limited the communication one could have with Shawn.

Shawn's special education teacher was a young woman who had just begun teaching. She was very enthused about her job, worked very hard with the students she was assigned, and was especially committed to helping Shawn improve

his education. However, things continued at an extremely slow pace and it was virtually impossible to test Shawn on what progress he was making. But the biggest question in the young teacher's mind was, "What is Shawn thinking? We can ask him specific questions but what does he really want to talk about?"

Then one evening it hit her. The next day she put the alphabet up on the board in front of Shawn. She said, "Shawn, today we are going to hear from you. What do you want to know? What is in your mind?" With that she proceeded with this crude communication system to hear the first thoughts from Shawn.

The system was rather simple. The alphabet was set forth in four rows. The first row was letters A through G. The second row was letters H through N. The third row was letters O through U. The fourth row was letters V through Z. She prompted Shawn to spell out whatever he wanted to say. She then began to identify the first letter of the first word. Was it in line one? Was it in line two? Was it in line three? Was it in line four? Shawn responded with the rightward look of his eyes "yes" to the second question. Was it the letter H? Shawn responded by moving his eyes "yes". She wrote the letter H up on the blackboard. They then proceeded through this laborious process until Shawn had carefully stated, "How Paul paid?"

Well, this initial conversation was not going too well. In the first place, the young teacher did not know who Paul was. Secondly, she had no context for the question. Thirdly, the

whole thing didn't seem to make sense. She called Shawn's mother who quickly came to the classroom. When she saw the question, she broke down in tears and laughter at the same time. Obviously the tears were for the communication breakthrough that had just been accomplished; the laughter was because she immediately understood the question.

You see, I am Paul. I was Shawn's lawyer. I was spending significant amounts of time with him in preparing a personal injury lawsuit on his behalf against the Yamaha Corporation. Yamaha had failed to provide a basic safety device on the motorcycle, a kill switch, which would have prevented the crash and avoided his injuries. Kill switches were a standard in the industry and, in fact, the year after this motorcycle was manufactured were mandated under the Federal Motor Vehicle Safety Administration Standards. Shawn wanted to know how in the world I was being paid for all the time I was spending on his case.

Six months later we got to trial. It was a big case. There was a lot of interest by the press. It was a dramatic case. Yamaha apparently was convinced that there was no basis to the lawsuit and refused to make any settlement offer. This was a case that would have to be decided by the jury; and Shawn's life depended on the outcome. There was little hope that he would live much longer if he was confined to a nursing home.

I hope I have adequately described Shawn in his current condition. He is vibrant. But you have to be around him for a considerable period of time and understand him in

order to realize this. Otherwise he sits in a wheelchair, bent forward and to the right as his spine continues to curve, with his head hanging down, and often drool coming from his mouth. He looks like he is incompetent. He looks like he is in a semi-vegetative state. He looks like he cannot appreciate what goes on around him. I didn't want him sitting in the courtroom with the jury staring and gaining that impression. So the jury did not see Shawn until the sixth day of the trial.

I put the young teacher on the stand to describe Shawn's educational program. I had her tell about the breakthrough in communication that occurred when Shawn "spoke his first words." (I didn't have her tell them his first question, thinking it was not appropriate.) I asked her, "If Shawn was here would you be able to demonstrate this communication system to the jury?" She said, "yes." I then walked over to the courtroom door, stepped outside and wheeled Shawn into the courtroom. It was electric. Shawn's eyes were as wide as could be. The jurors who had been hearing about Shawn for more than five days were riveted on him. Now was the time to show what Shawn was capable of, so that the jury understood that any verdict would be meaningful in his life.

I asked the teacher to give us a demonstration. We had the alphabet up on the board. She began by asking Shawn his name. They went through the alphabet in the usual laborious manner and spelled out his name. The process probably took ten to twelve minutes. When they got done, she congratulated Shawn and made a bit of a joke. He laughed out loud. The jury was startled by his laugh but truly understood the degree of his understanding and his sense of

humor. They were able to see that there really was someone trapped in that body.

It had been my plan at this point to terminate the demonstration and wheel Shawn out of the courtroom. But before I could say anything the young teacher volunteered, “Of course, I know what Shawn’s name is so that really wasn’t a very good example.” I thought it had been a great example. I thought we had accomplished exactly what we set out to do. However, her comment seemed to undercut the impact of our demonstration. I was slightly deflated and so decided we better continue to pursue this demonstration. I asked her to give us another example. This time she asked Shawn what his favorite sport was. Once again, they went through the laborious process of spelling out “football.” This took more than fifteen minutes. The jury, however, was fascinated and no one was bored. I felt very satisfied and once again intended to terminate the demonstration when, to my disappointment, once again, the teacher said, “Well, I knew his favorite sport was football so I guess that wasn’t a very good example either.” I thought “goodness lady, leave it alone.” So now I felt we had to go on.

There is a maxim that all lawyers learn. Never ask a question when you don’t know the answer. The reason is because the witness may come up with an answer you don’t expect, which destroys the purpose of the question in the first place. I know this maxim well. I seldom violate that rule. I did not intend to violate that rule with Shawn.

“Okay, I’ve got an idea. Last week Shawn’s cousin brought something to the nursing home for him to see. You don’t know what this was. Why don’t you ask Shawn what his cousin brought to show him.” This was my simple straightforward question. The answer was a dog. Is there any easier word to spell in the English language than dog? I knew that the demonstration would not take as long, but would accomplish exactly what we were trying to do for the jury. In fact, the young teacher said, “Oh, this is great. I don’t know what it was. This will really give you a good example of how we do this.” She then began the usual method of asking Shawn to spell the word.

She asked him if the first letter was in the first line. Of course, I knew it was. The letter D. He turned his head to the left indicating “no!” I thought oh my goodness, what is going on. It wasn’t in the second line, but it was in the third line. Eventually, they got to a P, and Shawn indicated “yes”. I was confused and extremely concerned. I didn’t know what the answer was going to be. The teacher went on to the second letter, which should have been an O, but Shawn was racing down the alphabet saying “no” to the various letters and I was in a panic. I stepped back into the rows of seats for people watching the trial and went over to his caretaker. I said, “What is he doing? The answer is supposed to be dog.” She responded, “I don’t know, you asked the question!” I was now terrified. They had now put a U up on the board. My mind was racing. How do I get out of this? I am afraid our entire demonstration is failing to demonstrate that Shawn, in fact, understands what is going on around him. I decided to

terminate the demonstration. I was going to say something to the effect that Shawn apparently didn't understand my question, but we appreciated his time and that of the teacher in showing us this process. I stepped forward with this very intention.

However, I didn't want to interrupt the teacher as she continued to question Shawn so I thought that I would wait until the next letter came out and then I would terminate the demonstration. The third letter ended up being a P. At that point even I, finally realized what was happening. Shawn went on to spell the word "puppy." I cannot possibly describe how emotional the scene was in the courtroom. When he had finished, every single juror was in tears. One of the defense lawyers was crying. I stepped forward and said, "Shawn you did a great job, but I thought you were going to spell dog." He began laughing. The jury then began laughing. I wheeled Shawn out of the courtroom to never be seen again by the jury until after the final verdict.

At the end of the day the Judge made the comment to the lawyers in the courtroom outside the hearing of the jury, "You know there was not a dry eye in the courtroom today when Shawn spelled puppy, except for Plaintiff counsel and Defense counsel, you callous bastards."

The jury found in Shawn's favor in that case. Their verdict was \$10 million. In 1983 that was the largest verdict in the history of the state for a personal injury case. It remained the highest verdict for 11 more years.

Shawn is alive and well as a result of the jury's verdict. The monies have allowed him to live in a home of his own, designed to accommodate his needs. He has the professional help and personal assistance that has allowed him to thrive. At the time, the doctors estimated his life expectancy at a maximum of ten years; they now expect him to live a normal life expectancy. As much as anything, that verdict was the result of Shawn not being able to spell "dog" that morning in the courtroom.



PATERNITY CASE

I was asked to get involved in a paternity case. The client had been sued by the State alleging that he was the father of a newborn child. He came to me denying that he was the father and wanted to contest the charges.

The system under Washington law calls for a preliminary hearing in District Court. This preliminary hearing is designed simply to require the Prosecutor to show that there is probable cause that the defendant is the father of the child and to then bind the case over to Superior Court for the trial and the ultimate determination. From my point of view, this preliminary hearing is simply an opportunity to hear some of the evidence that will be presented by the prosecution and also to ask questions and discover their weaknesses and what information there might be to support a defense. It is not a time and, in fact, never a time to put my client on the stand.

The day for the preliminary hearing arrived and we appeared timely in the courtroom. The judge came on the bench and the prosecutor called his first witness. The first witness was the mother of the child, who was claiming that my client was the father of the child.

The prosecutor went through a number of preliminaries. He asked her name, her address, her age, had she had a child, when was the child born, what was the name of the child, etc. He then began a series of questions to establish probable cause for the paternity. Having established the date of the

birth of the child, he now asked if she had ever had sexual intercourse with the defendant. She said yes. He asked when was the first time that they had had sexual intercourse. She gave an answer that was consistent with the timeframe for when he could be the father. He then asked, “When was the last time you had sexual intercourse with the defendant?” There seemed to be a considerable delay in her answer, and when she spoke, I couldn’t hear her. I noticed the judge sat up in his chair. The prosecutor said, “I’m sorry I didn’t hear you, what did you say?” At this point, she spoke a second time and the judge began to laugh, as did the prosecutor. I still hadn’t understood her. I said, “What was the witnesses’ answer?” At this point, with nearly tears rolling down his cheeks, the prosecutor said, “She said last night.”

I immediately realized that this was not a good piece of evidence for our defense of the case. I continued to look forward toward the witness and remain calm. However, within a short time I turned my head to glance at my client to see his reaction. He had slid completely down into his chair.

At this point I was too flustered to ask any questions. The prosecutor couldn’t go on because of his laughter. The judge, through his laughter, said that he was finding probable cause and binding the case over to Superior Court for a trial. I packed up my briefcase and along with my client, we walked out of the building. The moment we exited the door, I turned to my client and said, “What in the world was that all about?” He said, “Well, last night I went over to her house to try to talk her out of bringing these charges, and then one thing led to another....”

Based upon this finding of probable cause, my client was unhappy with my defense of the case. He fired me. He hired another lawyer for the Superior Court trial. You may not be surprised to hear that he was found to be the father of the child.

EVEN BETTY BOOP WOULD HAVE BEEN EMBARRASSED

**– OR –
OOPS**

My client had suffered a very severe and disabling injury that was threatening her life. She had bronchial obliterated with organizing pneumonia. It is a complex, fortunately seldom seen, lung illness that greatly compromises an individual's ability to breathe. We believed it was caused by a toxic chemical exposure and we had sued the company that had created that exposure.

As I did research on this disease, I discovered that because bronchial obliterated with organizing pneumonia is difficult and cumbersome to say, it is generally referred to as "BOOP" in the medical community. In speaking of this illness, the term BOOP is almost always used. So I became comfortable with that term and used it during my preparation for trial.

At trial, I called the treating doctor. I had him describe bronchial obliterated with organizing pneumonia in considerable detail, and I also had him tell the jury how this is generally referred to as BOOP. We called it BOOP thereafter during his direct examination.

The defense was not contesting the fact that our client had BOOP; their own experts agreed. However, they denied that it was exposure to their chemicals that had caused the

BOOP. This was a hotly contested issue in the case as one might expect.

After I completed my direct examination, defense counsel stood up to begin his cross-examination. This was a seasoned, articulate and well-qualified lawyer. He knew what he was doing. He had a history of being a very effective trial lawyer with many successes in representing his corporate clients. I knew he would do his usual excellent job as he had done with other witnesses that I had already presented during the trial.

After preliminary comments, defense counsel said, “Now doctor, you have diagnosed the plaintiff with bronchial obliterated with organizing pneumonia, haven’t you?” The doctor said, “Yes.” “And you call this BOOP, don’t you?” The doctor again said, “Yes.” Defense counsel then walked over to the easel with a white tear-away butcher paper pad, and wrote in large black letters, “BOOB.” He then turned around and started to ask his next question of the witness. At this point, everyone in the courtroom began laughing. He looked around a little startled and said, “What’s the joke? I guess I missed it.” No one told him. He then went on and conducted an 80-minute cross-examination standing in front of that butcher paper with the word “BOOB” written behind him.

Honestly, cross-examination was very well done. On any other day, I have no doubt he would have been extremely effective. With his own hand-drawn description behind him, I don’t think the jury got much of the import of that cross-examination.

PRESS RELEASE

STRITMATTER TO RECEIVE HIGHEST AWARD FROM PUBLIC JUSTICE FOUNDATION FOR LIFETIME COMMITMENT TO JUSTICE

Thursday, June 10, 2010

SEATTLE, WA – The Washington law firm, Stritmatter Kessler Whelan Coluccio (SKWC) announced today that Paul Stritmatter will receive the highest award from the national public interest organization, Public Justice Foundation (PJ). The award will be presented at the Public Justice Foundation Annual Gala & Awards Dinner on July 13, 2010 in Vancouver, B.C.

The PJ Champion of Justice Award recognizes Stritmatter's 40-year commitment to access to justice and his dedication to seriously injured clients. Stritmatter was one of the founders of the Trial Lawyers for Public Justice (now PJ).

Stritmatter has worked on a number of high profile cases – including cases with PJ. One such case was *Buenrostro v. Washington Apple Advertising Commission* to recover damages for migrant farm workers (workers were fraudulently enticed to Washington State to pick an apple crop not ready to harvest). He successfully argued the PJ case of *Ruiz-Guzman v. Amvac Chemical*, establishing the right to rely on an alternative product to show that that challenged product's risks outweigh the beneficial effects of using an alternative design. *Brown v Yamaha WA* was a \$10 million verdict in 1983 that stood as the largest

personal injury verdict in Washington for over a decade. *Smith v. Behr* was a \$67.5 million class action verdict that held a corporation accountable for willfully hiding critical documents. In the 1970's, Stritmatter also worked on the Woburn, Massachusetts's toxic case that later became the subject of the John Travolta movie, "A Civil Action."

A founding partner of Stritmatter Kessler Whelan Coluccio, Stritmatter served as president of the Public Justice Foundation from 2001-02. He has been president of the Washington State Bar and of the Washington State Association for Justice. He was the inaugural chairman of the Northwest Justice Project from 1996-97. In Dec. 2009, the Washington State Association for Justice recognized Stritmatter for his achievements with the Lifetime Achievement Award. He received the prestigious Pursuit of Justice Award from the American Bar Association in 2003 and has previously been honored by a number of state and national legal organizations as an outstanding trial attorney. Stritmatter is regularly listed as one of the Top Ten Super Lawyers in Washington State.

ABOUT STRITMATTER KESSLER WHELAN COLUCCIO

Stritmatter Kessler Whelan Coluccio (SKWC) is a premier Pacific Northwest law firm devoted to representing plaintiffs in personal injury and wrongful death claims. Experienced in trial, SKWC attorneys welcome tough, complex cases. Our verdicts and settlements include product liability, nursing home, government liability, medical negligence, highway design, premise and construction site, class action, vehicle crashworthiness, major vehicle collision, maritime and aircraft crash cases.

The attorneys at SKWC are committed to making a difference in the lives of our clients, in helping to ensure justice for the injured, and in contributing to the legal community through leadership and education.

Paul L. Stritmatter, Keith L. Kessler, Paul W. Whelan, Kevin Coluccio, Brad J. Moore, Garth L. Jones, Ray W. Kahler, Karen K. Koehler, Mimy A. Bailey



STRITMATTER KESSLER WHELAN COLUCCIO

www.stritmatter.com

Hoquiam Office

413 8th Street
Hoquiam, WA 98550
Tel: (800) 540-7364
Fax: (360) 532-8032

Seattle Office

200 Second Avenue West
Seattle, WA 98119
Tel: (206) 448-1777
Fax: (206) 728-2131



STRITMATTER KESSLER WHELAN COLUCCIO

www.stritmatter.com

Hoquiam Office

413 8th Street

Hoquiam, WA 98550

Tel: (800) 540-7364

Fax: (360) 532-8032

Seattle Office

200 Second Avenue West

Seattle, WA 98119

Tel: (206) 448-1777

Fax: (206) 728-2131